

KAUA'I PLANNING COMMISSION
REGULAR MEETING
February 14, 2017

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Keawe at 9:05 a.m., at the Lihu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Kimo Keawe
Mr. Roy Ho
Mr. Wayne Katayama (arrived at 9:28 a.m.)
Ms. Kanoe Ahuna
Ms. Donna Apisa
Mr. Sean Mahoney

Absent and Excused:
Ms. Glenda Nogami Streufert

The following staff members were present: Planning Department – Michael Dahilig, Kaaina Hull, Marissa Valenciano, Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Jodi Higuchi Sayegusa; Office of Boards and Commissions – Administrator Jay Furfaro, Commission Support Clerk Lani Agoot

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Keawe called the meeting to order at 9:03 a.m.

ROLL CALL

Mr. Dahilig: Commissioner Mahoney.

Mr. Mahoney: Here.

Mr. Dahilig: Commissioner Katayama, Commissioner Ho.

Mr. Ho: Here.

Mr. Dahilig: Commissioner Ahuna.

Ms. Ahuna: Here.

Mr. Dahilig: Commissioner Apisa.

Ms. Apisa: Here.

Mr. Dahilig: Chair Keawe.

Chair Keawe: Here.

Mr. Dahilig: Five members present Mr. Chair.

APPROVAL OF THE AGENDA

Mr. Dahilig: Mr. Chair we would recommend on the agenda we would take after the Consent Calendar items K, which is the Committee Reports, and item F.2 (b) if the hearing is closed regarding the County of Kauai Department of Water Reservoir, and then move through the agenda as posted.

Chair Keawe: Do I have a motion for the adjust agenda?

Mr. Mahoney: Chair, move to approve the adjusted agenda.

Ms. Apisa: Second.

Chair Keawe: Moved and seconded all those in favor. (Unanimous voice vote) Opposed? Motion carried 5:0.

MINUTES of the meeting(s) of the Planning Commission

Contested Case Calendar of December 13, 2016

Regular Meeting Minutes of January 10, 2017

Contested Case Calendar of January 10, 2017

Regular Meeting of January 24, 2017

Chair Keawe: We have 4 individual meetings; let's do them one at a time. The first is the contested case calendar of December 13, 2016.

Mr. Mahoney: Chair, move to approve.

Mr. Ho: Second.

Chair Keawe: Moved and seconded all those in favor. (Unanimous voice vote) Opposed? Motion carried 5:0. Next is the regular meeting of January 10, 2017.

Mr. Mahoney: Move to approve.

Mr. Ho: Moved and seconded all those in favor. (Unanimous voice vote) Opposed? Motion carried 5:0.

Chair Keawe: Next is the contested case calendar of January 10, 2017.

Ms. Apisa: Move to approve.

Ms. Ahuna: Second.

Chair Keawe: Moved and seconded all those in favor. (Unanimous voice vote) Motion carried 5:0. Last is the regular meeting of January 24th.

Mr. Mahoney: Chair, move to approve regular meeting of January 24, 2017.

Mr. Ho: Second.

Chair Keawe: Moved and seconded all those in favor. (Unanimous voice vote) Motion carried 5:0.

RECEIPT OF ITEMS FOR THE RECORD (NONE)

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing (NONE)

New Agency Hearing

Class IV Zoning Permit Z-IV-2017-3, and Use Permit U-2017-3 and Special Permit SP-2017-1 to allow replacement of an existing monopole with a 60 ft. high monopine tower and associated improvements at the Kilauea Japanese Cemetery near Crater Hill, approx. one mile north from Kilauea Town, at the end of Mihi Road, further identified as Tax Map Key (4) 5-2-004:049, and affecting a parcel approx.. 1,997 acres in size = *New Cingular Wireless PCS, LLC (AT&T)*. [Director's Report received 1/24/17.]

Mr. Dahilig: Mr. Chair the department would recommend opening the agency hearing at this time.

Chair Keawe: We will open the agency hearing for this item.

Mr. Dahilig: Mr. Chair I do have one individual signed up for this agency hearing, that is Lincoln Watkins.

Chair Keawe: Mr. Watkins can you come forward please and state your name for the record.

Mr. Lincoln Watkins: Lincoln Watkins. I have sent some pictures and maybe I went overboard on this, we are the neighbors just to the north. This is our view out over the Japanese Cemetery, it's great to have a neighbor like the Japanese Cemetery, and this is the old cell tower. Our preference would be for no cell tower but we understand it does the community good and it needs to go somewhere and that the Japanese Cemetery derives revenue from it. The new cell

tower will be about a third higher than that and it will look like a tree and it will look better than this so we would encourage you to approve the application as quickly as possible. As soon as that is in we will plant some trees behind it so it doesn't stick out like a sore thumb out there on Crater Hill. I believe the cemetery wants to do some landscaping in front of it, we have done some landscaping for the cemetery already.

Chair Keawe: So you would be planting trees on your own property.

Mr. Watkins: Correct and we will help the cemetery, I think they plan to plant some in front so it doesn't just stick out there like a sore thumb. Connected to this, AT&T is currently on top of this tower over here which is on county property. Our hope is and I believe there may be some code that goes along with this, is that we can clean up this area over here. It has become an area for crime, drug transactions. People come through here and then stay in the cemetery overnight. A lot of bad stuff goes on up there. I put some pictures in there to show a criminal break in that was just 2 months ago where the home just 20 yards from here was broken into, doors were ripped off, all the windows shattered and things were stolen and that happened over a 48 hour period.

Essentially on those pictures there are 3 poles there, this is the KIUC pole and the AT&T equipment is on top of that so AT&T will be moving their equipment. I think this is very old equipment. They will be putting new equipment on the new tower which is terrific. KIUC is left with this tower that they use for their radio communications. We have made some inquiries with KIUC and also with Verizon even though AT&T is the applicant on the new tower, the tower is owned by Verizon and AT&T can't dictate who goes on the new tower. So we have made inquiries both with Verizon and KIUC about them moving their radio frequency antenna onto the new tower and if they were to do that, an apparently there aren't any technological issues it is probably an economic issue, we could remove this tower and that would make the area look much better. This tower, nobody can tell us what that is. Apparently it was an old paging tower that is derelict and it is on county property, it is outside the fenced area and we would love to see that go away. This is the utility tower that is KIUC and it also carried Hawaiian Tel and Oceanic Cable. We are in discussions with KIUC to pay to move this tower, the line is underground. This is the view from the Japanese Cemetery and it is really just awful. This is the top of Crater Hill. It's viewable from Kilauea Lighthouse Road and from a lot of the North Shore and it is really unsightly. If we can take some simple measures to get rid of these old towers, collocate on the new tower, get rid of the derelict equipment and clean this up it will be a safer much nicer area for the cemetery. The neighbors up there will have a much nicer view.

Mr. Dahilig: Three minutes Mr. Chair.

Chair Keawe: Thank you for your testimony.

Mr. Watkins: Our request is that the Commission do what is possible to encourage the applicant or whomever to get together to try and resolve these issues that we can get rid of these unsightly poles and have a cleaner, safer neighborhood.

Mr. Dahilig: Mr. Chair that is the only individual we have signed up to testify on this agenda item. The department would recommend making a final call for this agency hearing.

Chair Keawe: Anyone else?

Mr. Dahilig: Given the testimony provided Mr. Chair, the department would recommend closing the agency hearing at this time.

Chair Keawe: We will go ahead and close the agency hearing on this item.

Mr. Mahoney: Chair, move to close the agency hearing.

Mr. Ho: Second.

Chair Keawe: It's been moved and seconded all those in favor. (Unanimous voice vote)
Opposed? Motion carried 5:0.

Class IV Zoning Permit Z-IV-2017-4 and Use Permit U-2017-4 to allow construction of a 0.5 MG reservoir, production well, control building booster pump station and associated improvements and Variance Permit V-2017-1 to deviate from the land coverage requirement with the Agriculture (A) zoning district, involving a parcel situated on the eastern side of Puuwai Road in Kalaheo, immediately adjacent to property identified as 5316 Puulima Road, Tax Map Key (4) 2-4-003:007, and affecting a parcel approx. 0.755 acre in size = **County of Kauai, Department of Water.** [Director's Report received 1/24/17.]

Mr. Dahilig: Mr. Chair the department would recommend opening the agency hearing at this time.

Chair Keawe: We would like to open the agency hearing on this item.

Mr. Dahilig: Mr. Chair I do not have anybody signed up to testify on this particular agency hearing. The department would recommend making a final call on this matter.

Chair Keawe: Is there anyone present that wishes to testify on this item?

Mr. Dahilig: Seeing the absence of any testimony the department would recommend closing the agency hearing at this time.

Chair Keawe: I will entertain a motion to close the hearing.

Mr. Mahoney: Chair, move to close the agency hearing.

Mr. Ho: Second.

Chair Keawe: It's been moved and seconded all those in favor. (Unanimous voice vote) Motion carried 5:0.

Continued Public Hearing

Zoning Amendment ZA-2017-2: Petition to amend Ordinance No. 436, relating to Section 8-17.2 of the Kauai County Code (1987), as amended, requesting a revision to the Visitor Destination Area boundary in Poipu; involving a project located along the makai side of Pe'e Road in Poipu and immediately adjacent to The Point at Poipu resort facility, further identified as Tax Map Keys (4) 2-8-021:041, 044 through 068, and containing a total area of 13.078 acres = **CIRI Land Development Company**. [Director's Report received and hearing deferred 1/24/17.]

Mr. Dahilig: The department would recommend opening the continued public hearing at this time.

Chair Keawe: We will open the continued public hearing on this item.

Mr. Dahilig: Mr. Chair no one has signed up to testify on this public hearing. The department would recommend making a final call for any testimony on this public hearing.

Chair Keawe: Final call on this item.

Mr. Dahilig: Mr. Chair given the absence of any additional testimony the department would recommend closing the public hearing on this particular matter.

Chair Keawe: I will entertain a motion to close the public hearing.

Ms. Apisa: So moved.

Mr. Ho: Second.

Chair Keawe: It's been moved and seconded all those and favor. (Unanimous voice vote) Opposed? Motion carried.

CONSENT CALENDAR

Status Reports (NONE)

Director's Report(s) for Project(s) Schedule for Agency Hearing on 2/28/17.

Class IV Zoning Permit Z-IV-2017-5, Use Permit U-2017-5, and Special Permit SP-2017-2 to allow construction of a new terminal/administration facility, fueling area, aircraft hangar, and associated improvements on a parcel located along the makai side of Ahukini Road in Lihue, situated approx. ½-mile north of the Lihue Heliport facility, further identified as Tax Map Key 3-5-001:158, and affecting a portion of a larger parcel containing 61.5 acres = **Air Service Hawaii**.

Director's Report pertaining to this matter.

Mr. Dahilig: That is the only item we have set for the consent calendar Mr. Chair. Given the absence of any 2 Commissioners wishing to discuss this particular item the department would recommend moving on to the next agenda item.

Chair Keawe: Let's move on to the next item.

COMMITTEE REPORTS

Subdivision

Mr. Ho: Two items before us this morning, Kakuda Brothers consolidation is approved, Cameron Burgess, as deferral to February 28th. That concludes the subdivision committee report.

Chair Keawe: Do I have a motion to accept the subdivision report?

Mr. Mahoney: Chair, move to accept the subdivision report.

Ms. Apisa: Second.

Chair Keawe: It's been moved and seconded to approve the subdivision report, all those in favor. (Unanimous voice vote) Opposed? Motion carried 5:0.

NEW BUSINESS

Class IV Zoning Permit Z-IV-2017-4 and Use Permit U-2017-4 to allow construction of a 0.5 MG reservoir, production well, control building booster pump station and associated improvements and Variance Permit V-2017-1 to deviate from the land coverage requirement with the Agriculture (A) zoning district, involving a parcel situated on the eastern side of Puuwai Road in Kalaheo, immediately adjacent to property identified as 5316 Puulima Road, Tax Map Key (4) 2-4-003:007, and affecting a parcel approx. 0.755 acre in size = **County of Kauai, Department of Water.** [Director's Report received 1/24/17.]

Staff Planner Dale Cua read the Director's Report into the record. (On file)

Mr. Dahilig: Mr. Chair if there are any questions for the planner.

Chair Keawe: Do the Commissioners have any questions for the planner?

Mr. Dahilig: If not then it is appropriate to have the applicant come and make their presentation.

Chair Keawe: Can the representative for the applicant come forward please.

Mr. Jay Stone: Good morning Chair, good morning Commissioners, I am Jay Stone with Belt Collins Hawaii.

Mr. Brian Winden: Good morning Chair and Commissioners, I am Brian Winden with the Department of Water.

Chair Keawe: Can you give us a brief summary?

Mr. Stone: The project is to install a new concrete water tank, control building, new well, and booster station at the subject site. The need for the project is to replace a dilapidated water tank that is across the street from the subject parcel. That tank was installed about 65 years ago, it has been relatively expensive to repair and upkeep. There are also some aging waterlines that are in the area that goes back to 1942. The need for the project is to improve the water reliability and service to the customers in the area. It is to project and serve the domestic water use. The public will be primarily using the water as customers of the Department of Water. We have looked at other public and private uses in the area through the HRS 343 environmental assessment process and found a finding of no significant impact to the development. The application will improve the reliability of the water system. There will be short term impacts during the construction of the facility and those will be mitigated through various best management practices through noise, rector control, and air and dust pollution.

Chair Keawe: The apparent need for the facility is?

Mr. Stone: The need for the facility is to replace a dilapidated tank that is across the street that the Department of Water has found to be taking a lot of expense and time to repair and upkeep. There is also an expectation of growth in the area and there is insufficient storage capacity as well as production well capacity in the Kalaheo area to service the projected growth.

Chair Keawe: Were there any other alternative water sources that were considered?

Mr. Stone: There were a couple other locations looked at for the production wells, one was across the street from the subject parcel, that location was deemed infeasible due to the existing topography at the site. The site across the street which is called the nursery tank site would require extensive grading because it slopes away and down to a gulch from the road. There was also another tank site that was examined, that site would require and extensive amount of clearing to provide access to that particular site.

Mr. Dahilig: Just to flush out the record, in terms of your 343 document that you produced for this particular action, what kind of outreach did you do to ensure 6 compliance with HRS 6(e) relating to native Hawaiian rights and any cultural or historic claims that could be potentially raised concerning this action?

Mr. Stone: We did do an archeological inventory survey as well as an archeological assessment that was submitted to SHPD. We also did a cultural impact report where we did reach out to people in the community. I don't have the exact number of people, I would have to look at the EA, but that process was conducted at the time of the environmental assessment.

Mr. Dahilig: And the State Historic Preservation Division did concur with your findings?

Mr. Stone: Yes they did concur with our findings.

Chair Keawe: Any questions from the Commissioners?

Mr. Ho: Where is the funding coming for this? Is it part of your capital improvement projects?

Mr. Winden: Yes this is a capital improvement project and it is an expansion project, part rehab and replacement and part expansion of the tanks.

Mr. Ho: It was identified as a problem area before and you are now just getting to fix it?

Mr. Winden: It was identified in our water 2020 project list.

Mr. Ho: What would the cost be?

Mr. Winden: Construction costs for the 3 packages, I believe right now the estimate is around 18 million for the 2 tanks and the water service improvements and the pipelines.

Chair Keawe: Any other questions Commissioners?

Ms. Ahuna: Who controls the tank? Would it be controlled by the Department of Water throughout the project or the lifetime or does it go under another agency?

Mr. Stone: It would be under the Department of Water.

Ms. Ahuna: What happens to the old tank, the dilapidated one?

Mr. Stone: The existing tank, the Department of Water has installed a temporary solution to keep it in service.

Ms. Ahuna: So that is still going to remain and then you guys are going to build the additional?

Mr. Stone: The intent we have to keep that tank online until the new tank is installed and until all the improvements have been constructed. The intent at one time was to eventually demolish and clear that site.

Ms. Ahuna: So that will happen in the long term after the new tank is installed?

Mr. Stone: That is the long term intent. The department may also decide to decommission the tank but not demolish the facility. That is also a possibility.

Chair Keawe: I would like to acknowledge Commissioner Katayama has joined the meeting.
(9:28 a.m.)

Ms. Apisa: What is the timing on the construction of the new tank?

Mr. Stone: The construction NTP is expected by the end of this year, it is part of multiple packages, 2 other packages that don't involve these permits and variance. This particular site, the Yamada tank site will start construction sometime in 2019 after one of the other packages is constructed.

Chair Keawe: One last question, just to give us an idea of the time of when this project started, was it 10 years ago?

Mr. Stone: We came on in 2011. That is when we started on the project.

Chair Keawe: So we are looking at somewhere in 2018, 2019, or 2020 to complete.

Mr. Stone: There will be different phases for the whole development of the site. Because of how the water system is constructed in that area the sequence of construction of the different packages have to go in a certain order in order to maintain a reliable service to the customers. So a tank at a different location has to be constructed first, then the tank at the Yamada site subject parcel has to be constructed. After that a waterline transmission main also has to be constructed so that the service from the new tanks can then be delivered to the customers, also because the dilapidated and aging water pipes in that area. After the tank is constructed at the subject parcel the production well will need to be drilled and constructed and tested to verify its sustainable yield, its production capacity. Once that has been verified then the completion of the development of the subject parcel can be completed which includes the additional booster stations, the outfitting of the well, the control building, and the remainder of the site work.

Chair Keawe: So this basically will alleviate some of the issues you have had in that Kalaheo area with the injection well and that type of thing?

Mr. Stone: It will relieve issues with maintaining reliable service to the customers.

Chair Keawe: Any other questions, Commissioner Ahuna.

Ms. Ahuna: In the budget for the building of this, is there money reserved for decommissioning the old tank or is it going to sit there after this is done? I don't want to see a bunch of old water tanks sitting around. Every time we build new stuff I think it is important to make sure we are removing the old stuff. Is that part of the project?

Mr. Winden: At this time that is not part of this project but we can work with the Planning Commission to make sure that tank is demolished if it is needed but the existing tank was intended to remain in service until the completion of this project. Money has not been allocated separately for demolition of that tank or abandonment at this time. We certainly could in the future. We would have that ability after this project is complete.

Chair Keawe: Any other questions for the applicant? Dale, can you read your recommendation? Sorry, Mr. Ho.

Mr. Ho: Just to backtrack, you said you might keep the tanks just in case you need more water capacity later.

Mr. Stone: No, what I said was that the original intent was to demolish the nursery tank site. We have to keep the tank in service until the new improvements have been constructed. The Water Department could also look at abandoning the current facility and mothballing it versus demolishing the entire site.

Mr. Mahoney: If it doesn't work now why would you want to mothball it? If the original plan was to demolish it, it doesn't make any sense to mothball it if it is no good to begin with. Why are you building a new one?

Ms. Apisa: Does it serve a function after the new one is built?

Mr. Stone: It doesn't. It is an economic choice. To demolish the existing facility raises its own challenges. As Brian has said, after the improvements have been constructed it is something that the Department of Water could look of in terms of how to program in the demolishing of the facility and work with the Commission on that.

Mr. Ho: When you demolish/mothball it is the tank dry and then you coat it with something to preserve it so that it is reusable if you have to bring it back in service?

Mr. Stone: The tank would be emptied. Right now the tank is an existing concrete structure that prefabricated tanks have been installed inside so those plastic tanks would remain inside the concrete structure that has been dilapidated. That is how the department has been able to maintain that service from the nursery tank was by basically lining it with plastic tanks inside.

Chair Keawe: Any further questions from the Commissioners?

Ms. Ahuna: I think it is a great project in moving us forward as a community with better water service however I think we need to look at long term with the decommissioning of old tanks so that we don't have a bunch of old tanks all over our island just sitting there. In future projects that should probably be a part of the actually of a new tank. We have 13 old telescopes up on Mauna Kea right now just sitting so I don't want to see all these old water tanks sitting around our island when they could be decommissioned and the land could be used for other things that are more purposeful for our community.

Chair Keawe: You had mentioned that is a fiscal issue with regard to decommissioning and disposing of obsolete water tanks. Is there a possibility of including those in long term planning as a line item?

Mr. Winden: Yes, absolutely, thank you for your comments. Typically what we have seen is we have been focused on maintaining service and new construction for the customers but we can certainly keep that in mind for future projects and even ongoing projects. We have other ongoing projects in design right now for construction of new tanks so we can certainly consider that comment. And to answer your question Chair, yes it would be primarily a financial question

for the department to address whether or not it was viable financially to both construct new tanks and demolish existing or abandon them case by case but we can certainly note that it is the preference of the Commission to have abandoned tanks demolished for the sake of not seeing them around and the eyesore.

Mr. Dahilig: The department may be willing to present an additional condition after the planner reads the currently proposed conditions. May I ask would completion of the tank require a certificate of occupancy from the Building Division or do you generally not need a certificate of occupancy?

Mr. Winden: Our construction management division head is saying no.

Mr. Dahilig: Mr. Chair may propose an additional condition at the end our presentation of conditions to try to maybe have the Commission entertain some additional item concerning this matter that is being raised.

Chair Keawe: Dale can you go ahead and read the recommendation please.

Staff Planner Dale Cua read department recommendation into the record. (On file)

Mr. Dahilig: Mr. Chair, given the discussion with the Commission at this point, we would propose an additional condition 9 on the table, orally, that would read, "Within 30 days of bringing the tank into service the Department of Water shall present a status to the Planning Commission outlining future plans for the existing tank represented to be taken out of service and the Commission strongly encourages DOW to explore removal of this tank that is proposed to be abandoned." We are willing to work on that language Mr. Chair but we would propose that as a way to keep the Commission informed as well as encourage the Department of Water to work on a plan concerning this particular tank.

Chair Keawe: Are you willing to accept the 8 conditions that were previous to this one amendment?

Mr. Winden: Yes we are willing.

Chair Keawe: And are you willing to work with the Planning Department to come up with a 9th condition similar to what has been read into the record?

Mr. Winden: Yes, absolutely.

Mr. Dahilig: If you are okay with the language as is then we would present that as a recommended 9th condition on top of the 8 presented in the written report Mr. Chair, and we would stand on that recommendation to approve with conditions.

Chair Keawe: Any further discussion on the conditions? If not we will entertain a motion.

Ms. Apisa: I make a motion to move to approve with the conditions as recommended by the Planning Department.

Mr. Ho: Second.

Chair Keawe: Any discussion on this motion, all those in favor. (Unanimous voice vote)
Opposed? Motion carried 6:0.

GENERAL BUSINESS MATTERS

Petition to Appeal Decision of the Planning Director (1/13/17) for Non-Conforming Use Certificate TVNCU #4298 (Hale Mahana) by Alexandra Falk Living Trust, Tax Map Key (4) 5-8-010:015(3), Haena, Kauai = *Alexandra Falk Living Trust*.

Memorandum (1/19/17) from the Clerk of the Commission Requesting to Refer the Appeal to a Hearings Officer (Contested Case Hearing No. CC-2017-2); Request for Delegation of Authority to the Clerk of the Commission to Procure and Appoint a Hearings Officer on Behalf of the Commission for the Instant Appeal.

Mr. Dahilig: Mr. Chair the department has circulated the documentation and the clerk's recommendation is to appoint a hearings officer. Given procedural due process we would recommend any representative of the petitioner be present to make his comments on this matter.

Chair Keawe: Mr. Chun.

Mr. Jonathan Chun: Good morning, Jonathan Chun on behalf the applicants on items 1 and 2. The applicant just wishes to reiterate they reserve their rights regarding any potential objections they might have and also we are probably going to file a motion like all the other ones to disqualify which is going to come back to the Commission anyway. By appearing today we are not waiving any of the objections we have that we are going to be raising later on in front of the Commission.

Mr. Dahilig: Mr. Chair given that Mr. Chun has also commented on item I.2, foregoing a formal reading, we would be possibly handling both matters at the same time.

Chair Keawe: Do the Commissioners understand what is before you right now with regard to accepting the recommendation to refer these 2 items to a hearings officer? I think there was a memorandum included that has the language in it.

Mr. Dahilig: It would be to recommend appointing a hearings officer to conduct the required contested case hearing related to these 2 appeals and request authority to procure and appoint a hearings officer of behalf of the Commission.

Chair Keawe: Can I have a motion.

Mr. Ho: Mr. Chair, are we going to do both the Lihi Kai and Mahana on the same motion?

Chair Keawe: One motion to cover both.

Mr. Dahilig: CC-2017-2 and CC-2017-3.

Mr. Mahoney: I move to, for the 2 items in question, approve a hearings officer and for us the authority to appoint one. Does that sound correct?

Mr. Dahilig: Delegate authority to the clerk to appoint.

Mr. Mahoney: Delegate authority to the clerk.

Mr. Ho: Second.

Chair Keawe: Any discussion on the motion, all those in favor. (Unanimous voice vote)
Opposed? Motion carried 6:0.

Request for Extension of Time of Five (5) years to operate a helicopter landing site near Manawaiopuna Falls for Class IV Zoning Permit Z-IV-2008-5, Use Permit U-2008-3 and Special Permit SP-2008-2, Tax Map Key 1-8---1:001, Koula Valley, Kauai = *Island Helicopters Kauai, Inc.*

Director's Report pertaining to this matter.

Staff Planner Chance Bukoski read the Director's Report into the record. (On file)

Chair Keawe: Any questions from the Commissioners for the planner?

Ms. Ahuna: Chance, how long have they been operating? Since 2015 they were approved for 2 years and prior to that?

Mr. Bukoski: 2011.

Ms. Ahuna: Before that there was no activity?

Mr. Bukoski: No. The only activity was prior to the sugarcane use of that region, Gay and Robinson, when they would hike up there.

Ms. Ahuna: And they just land on grass.

Mr. Bukoski: There are actually 2 big open spaces. One is for what they use, they only do 1 helicopter at a time but just in case there is an emergency situation they do have another landing facility right next to the area just in case 1 helicopter breaks down.

Ms. Ahuna: There is no landing pad.

Mr. Bukoski: No, it is just well maintained grass.

Chair Keawe: Any other questions? Chance I had one. On the January 31st inspection, can you tell me a little about what comprised of that inspection?

Mr. Bukoski: When I arrived at the helicopter facility they gave me these booties to put on my feet. First off they made me scrub my feet and then I put the booties on. Then I told the captain I am a little woozy so we just went straight, we didn't do the whole tour we just went straight to the site. When we landed we settled down on the grass area and talked story for a little bit. It took about 5 minutes to disembark the helicopter and then it was an initial hike, maybe about a 5 minute hike to the falls where it was well trimmed and well maintained. There was a lot of indigenous vegetation or endemic vegetation like ferns. Around the initial area there was a rope fence so the visitors don't go off the trail and then there was the falls right in front of me. After that we took some photos and headed back to the helicopter and flew back to the airport.

Mr. Katayama: Chance, in your section of the evaluation I think it will be very helpful if you review the existing recommendations and annotate the compliance or if there are any issues with that just to make it a little clearer. So as you have the new recommendations, historically as this permit comes up for renewal, the Commission has a history behind it that they are indeed good partners in this case.

Mr. Bukoski: Noted.

Mr. Katayama: Traditionally permits run with the land. In this case the applicant is an operator of that parcel and I guess they have a license with the landowner. In the event that this company decides not to use the area or abandons it how does the department feel that if there is a new operator, that these conditions would apply or how would that permit run then or be transferred.

Mr. Dahilig: I think like anything, because the conditions do run with the land we have to in effect look blindly at the entity that is exercising the land right and look at the track record and whether or not that entity is or is not meeting the conditions set forth by the Commission over the years on this permit. So if an operator does happen to change based off of choice by either the landowner, or let's say the Lofsteads decide to sell their company or something to that effect. What our department's kuleana would be in terms of looking at the permit would be just to assure that the new operator is meeting the conditions of approval and is operating in the manner set forth by the Commission. That would not provide and impetus for us to say we like the Lofsteads better, we don't like you now so we are going to take the permit away.

Mr. Katayama: I guess I am more addressing the case of responsibility and accountability for the permit because nowhere on these permits is a landowner recognized.

Mr. Dahilig: Like anything in as much as we want to also stay in these silos as I articulated, a lot of what has come over the Planning Commission floor has been the discussion on where the entity as proposed right now has had a special relationship with the Robinsons. And as brought up in previous Planning Commission meetings on this particular permit this is the only helicopter company on the island or in the state that is allowed to land in Manawaiopuna Falls. So there is a certain selectiveness I think that the Robinsons in their own care for their land and their natural

resources have chosen to not have an infiltration of these helicopter landings at Manawaiopuna Falls. Again, it comes back to our ability at the department to ensure that we have no complaints and as you noted previously we should articulate in the reports there were no complaints over the past 2 years. We can confirm that for the Commission. That track record over the past 2 years of operation as well as running through the exercise that Chance brought forth I think provides us assurance to make a recommendation like this. You do note that the extension is for longer than the 2 year period. We feel that given a track record of operating for 8 years at this point that they have proved to be reputable operators and have conducted themselves without any complaints over the past 8 years. So we feel that given that track record it is prudent for us to look a longer time period for having this come up. We are again not providing an unfettered opinion by saying that the timeline should be removed.

Mr. Katayama: Would the department consider appropriate for the longer extension an abandonment condition?

Mr. Dahilig: What would you suggest?

Mr. Katayama: One is, is it legal to do something like that? What I am sensing is that I would love to give the operator a longer period because they have established themselves however in the event that for whatever reason the site is not used over a period that the permit collapses.

Mr. Dahilig: That can be approached in 2 ways, either explicitly in the permit if you are viewing the timeline being replaced in lieu of an abandonment provision or there is the default which by ordinance. There is an abandonment article already states in the code that if you are not using it for a year the usage is considered abandoned and therefore you can no longer restart the use. We can take it one of two ways if you are looking at it from that point, we can either default to the code or we could explicitly provide for some type of abandonment provision that gets at what you are articulating.

Mr. Katayama: Again, it is quit pro quo. I like the longer horizon for the company. At the same time how does the department manage that permit, that use?

Mr. Dahilig: I think that is where the extensions provide for that check in course, that routine check in course. That is why we are continuing to have this as a method for identifying the operating in such a sensitive area. I think we are open to discussion if in lieu of the 5 year extension that an abandonment provision with intermittent inspections becomes a proposal. We could look at that as well.

Mr. Katayama: I think it is more for the department to recommend which is a better vehicle for you to manage these things.

Mr. Dahilig: I at this point, given how we have been approaching this we would have to come up with something different.

Chair Keawe: It may be appropriate to hear from the applicant. Can we hear from the applicant, Mr. Hong?

Mr. Walton Hong: Good morning Mr. Chair and members of the Commission, for the record my name is Walton Hong representing the applicant. With me is Kurt Lofstead who is the president of Island Helicopters Kauai. I just want to note that we have been flying to the falls since 2009, for 8 years. During those 8 years there have not been any complaints whatsoever. We have taken very strict measures to assure that we are not going to bring in any foreign seeds or other plants as Mr. Bukoski indicated wearing booties, brushing off your shoes before you get on the helicopter. I think the track record of this company is very clean and the only reason we are asking for a 5 year extension is it makes it easier for them to have longer range planning, advertising contracts, contracting with tour companies and the like.

They are as you know under very strict conditions. For example they cannot fly on Sundays and they cannot fly on 1 day of each week. We have submitted as requested or required with the Planning Commission annual reports of every day, what days they fly, what days they don't, the number of passengers, etc. The last annual report was submitted a few days ago to the Planning Department as required. We do ask for your favorable consideration. We think we have been back here, this is the fourth time we have been back here for an extension and if there were problems I could see the hesitation about granting a 5 year extension however in the past 8 years there have been no problems other than the requirement to come back every 2 years. So we ask your consideration for a 5 year extension. We do note however in the report that, it wasn't highlighted but we are bringing it to your attention, under the old condition they had to get an updated flora and fauna report every time they come in for an extension. We felt that if get a 5 year extension is 5 years too long a period for an updated flora and fauna report. Our request was that midway through this 5 year term, i.e. 2.5 years, that we would submit an updated report. This is very similar to what we have now every 2 years and now it is going to be every 2.5 years. If they should come back after 5 years and come for another extension then they will have another report at that time so I think we are covering all the bases and addressing all the concerns insofar as environmental factors are concerned. With that I will be glad to respond to any questions that you may have.

Chair Keawe: Commissioner Ahuna.

Ms. Ahuna: I think you are doing a great job in regards to that and I how you secure your clients with booties. From my understanding and what I am hearing from Commissioner Katayama is that landowner, should you guys move away or close down and another company comes in, that was the concern it sounds like and how do we make sure that happens. But it sounds like you guys have a good track record with the landowner and you have been doing a good job. I am just curious have you done any safety rescues or emergencies using that area for hikers or anything?

Mr. Kurt Lofstead: Have we had any emergencies, no.

Ms. Ahuna: Have you helped other outside hikers outside of your own clientele.

Mr. Lofstead: We haven't had any calls for emergency help out there otherwise we would if we were needed.

Chair Keawe: Why don't we take a short recess, maybe 10 minutes.

Commission recessed the meeting at 10:08 a.m.

Meeting called back to order at 10:17 a.m.

Chair Keawe: Can the applicants come forward please. Before we went on recess we were talking about some concerns with the issue of abandonment with regard to the permit or the agreement and I will give the floor to Mr. Katayama.

Mr. Katayama: Thank you Chair. Given light of our conversation regarding this permit and given the operator's historic performance what I would like to put forth to the Commission is maybe extending the permit time with a flora/fauna inspection midway. What I would like to propose and have the Chair consider is maybe a 6 year extension rather than a 5 with a report to the Commission after the third year.

Chair Keawe: Any comments from the applicant?

Mr. Wong: No, we are acceptable to that, thank you very much.

Mr. Dahilig: Mr. Chair, just for the record, we would take condition No. 10 and amend our oral recommendation to change it to reflect expiration on March 10, 2023. And just for the record the last half of the last sentence in section 10 should actually be underlined and should read "and present their findings to the Planning Commission after", and we would strike that and put, "3 years and again at such time as the applicant may seek further extension of his permits." So from "and" all the way down to the semicolon should be underlined as well in the proposal. Mr. Chair given what seems to be a general consensus among the Commission we would incorporate that as part of our oral recommendation before the Planning Commission and so recommend approval of the extension as presented.

Chair Keawe: Is the applicant willing to accept the recommendation as altered?

Mr. Wong: Yes we are.

Chair Keawe: Any further questions from any of the Commissioners with regard to this issue? If not we will entertain a motion.

Ms. Apisa: I move to accept the recommendation with the 6 year extension and with the adjustments.

Mr. Mahoney: Second.

Chair Keawe: It's been moved and seconded all those in favor. (Unanimous voice vote) Opposed? Motion carried 6:0.

Mr. Dahilig: We are back to item F.1 (a) for action. Because there is no Unfinished Business and Communications were now on New Business. Ms. Valenciano and the Deputy Director will be taking up this matter.

Class IV Zoning Permit Z-IV-2017-3, and Use Permit U-2017-3 and Special Permit SP-2017-1 to allow replacement of an existing monopole with a 60 ft. high monopine tower and associated improvements at the Kilauea Japanese Cemetery near Crater Hill, approx. one mile north from Kilauea Town, at the end of Mihi Road, further identified as Tax Map Key (4) 5-2-004:049, and affecting a parcel approx.. 1,997 acres in size = *New Cingular Wireless PCS, LLC (AT&T)*. [Director's Report received 1/24/17.]

Staff Planner Marissa Valenciano read the Director's Report into the record. (On file)

Chair Keawe: Commissioners, any questions for the planner?

Ms. Ahuna: Marissa, I read that they were going to take down the existing pole, correct?

Ms. Valenciano: Are you talking about the Verizon Wireless, yes, they intend to remove that existing monopole and replace that with the monopine design.

Ms. Ahuna: In regards to our testimony this morning, what is going to happen with that pole?

Ms. Valenciano: As I understand there is another communications facility on Mihi Road which is near this site in particular and KIUC I think owns that easement and I believe AT&T is currently on that pole and will be relocated to this monopine. As far as the other carriers that might be on it, we are working with Public Works at this time to identify any other unpermitted carriers.

Deputy Planning Director Kaaiana Hull: Commissioner Ahuna, to that point, the department is in agreement with the testimony that was submitted earlier this morning that there is somewhat of a visual blight if you will that is created by this antenna farm out there. Some of the problems that have allowed it to persist is essentially that these carriers, be it the KIUC site or AT&T, didn't have anywhere else to go. And actually AT&T a few years ago came before this body in an attempt to remove themselves from that site which is the beginning stages or process of decommissioning those other telecom sites. Ultimately through a long discussion process with the Kilauea Community, in particular the KNA, they first proposed a site closer in Kilauea Town which wasn't that supported by the community and so they ultimately decided to come back and propose to locate back at the Kilauea Cemetery but extending the existing pole and masking it visually with the tree appearance in order to decommission the other sites. So by having this proposal it does provide an opportunity for the folks on those other poles to collocate on the new pole. The KIUC pole, it is up to KIUC if they want to and then the third pole that is there, we have been in discussions with Public Works, they are trying to identify who that third pole is too. They can't quite figure it out. In site visits out there the structural integrity of that pole is definitely questionable so there should be impetus once they figure out if that pole has been legally authorized and if it hasn't they can have it removed. But if it has been authorized

previously some time ago, just given the integrity of the pole, that operator may want to have the opportunity to collocate on the proposed pole.

Chair Keawe: If I understand, the ultimate goal is to locate everything onto one pole, is that right? So we would have to move through the process of finding out who owns what and are they willing to move and if the pole that is being proposed will be willing to accept these new operators on their pole. But that is the ultimate goal.

Mr. Katayama: Historically each of the different services was coming before the Commission for permitting action and the locations of those poles would be in very proximity. So again, the department has led the initiative to collocate as many of the antennas as possible and I think once you have vetted the location and you have someone collocate is a much better process than having each of the different providers come with a pole location that is reasonably close to each other. I think this is one of the things that the Commission historically has been asking the providers to do to the extent they can do it. And Kilauea, I give the providers high marks for that. That old tower, it could be sugar, sugar plantations used to run an RF system and everyone had their own low wattage system so if we pull the plug and see who complains.

Chair Keawe: Is the applicant here?

Mr. Ho: Is this land leased or owned?

Mr. Hull: The land its self is owned by the Kilauea Cemetery, Japanese Cemetery Association, sorry, and it leases the land to Verizon.

Chair Keawe: That was part of the old sugar plantation; they gave that area to the association to manage, basically a place where they could put their plots.

Mr. Ho: If the lease is longer than what they need the tower for are they compensated well? If they give them a 30 year lease but they use it only for 5 years.

Chair Keawe: The association to the provider?

Mr. Hull: You would have to ask the applicant.

Chair Keawe: Can you introduce yourself please?

Mr. Les Young: Good morning Chair, Deputy Director and members of the Commission. My name is Les Young with AT&T. With me is Kevin Turner also with AT&T, he is one of the project managers. To specifically address the question that the Commissioner just brought up, AT&T has a 5 year minimum initial term of 5 years with the Kilauea Japanese Cemetery with the option to extend for an additional 25 years in 5 year increments.

Mr. Kevin Turner: We have been paying for the ground space to the Japanese Cemetery Association for a number of years now while we have been working through this process.

Chair Keawe: Can you give us an overview from your perspective about the project please?

Mr. Young: AT&T has been operating at this particular KIUC pole since probably the 1990's. Back at that time the intent was to seek the necessary zoning approvals, over time that was not done. As progress has continued in the wireless and telecom industry there comes a need for the updating and the upgrading of our facilities. AT&T is in the process statewide of going through the upgrading of all of their facilities to increase capacity and also deliver service to our customers. The existing 80ft wood pole up at Mihi Road can from a structural point of view not handle the proposed new equipment that AT&T would like to install. As a result back around 2013 a community meeting was held with the Kilauea Community Association to review a potential site at the Lighthouse Fellowship Christian Church. That meeting was not well received in terms of the proposed location; AT&T was proposing an 80 foot monopine. The recommendation was that AT&T goes back in to the community to look for an additional site that would possibly fit in better with what the residents were looking for.

In April of 2016 we went back to the community with the presentation. At this time we presented a collocation opportunity with Verizon. The proposal was to take down the existing 35 foot Verizon tower and replace it with a 60 foot stealth monopine tree whereby both Verizon and AT&T could collocate. What we are planning to do right now is open it up no so much for AT&T but if I am able to speak slightly for Verizon we have put several of the members of the community in contact with Verizon so that they can open up a dialogue to see what can be done as far as collocating additional antenna carriers besides AT&T. Right now the only 2 carriers planned for that tower would be Verizon and AT&T. That tower will be fairly stealth such that from a structural point of view that tower or that monopine facility should be able to accommodate several additional carriers but that is a decision that needs to be made by Verizon in consultation with any potential new carriers and of course a structural analysis would have to be conducted to make sure that tower can take the additional wind and weight load.

Chair Keawe: I'm sure you have listened to the testimony and discussions this morning and the ultimate goal is to have 1 pole with regard to consolidating or getting rid of things that are there now to have something that is less obstruction in nature. I think whatever can be done from your perspective as the applicant to move that along I think would be most helpful.

Mr. Young: Yes. We have spoken with the Verizon folks and we have encouraged them to consider collocation opportunities beyond just with AT&T. Mr. Watkins who provided testimony earlier is one of the gentlemen who has been in contact with Verizon but there is still additional work to be done because again, the pole does not belong to AT&T it belongs to KIUC. There are still some issues regarding the ownership of the other wood poles on Mihi Road so even though that is our goal and we will work and assist in whatever way we can there are still ownership issues that need to be determined and of course those owners contacted to see what their plans may be.

Chair Keawe: Any question, Mr. Ho.

Mr. Ho: What is the size of this tower and the facility around it?

Mr. Young: The tower that we propose is going to be 60 feet tall and the compound around it that will house our equipment is 1,300 feet. Between the 1,300 square feet Verizon will occupy 900 and AT&T will occupy 450 square feet for our equipment shelter and other necessary cabinets to run our facility.

Mr. Ho: And this compound is it going to be hidden visually from the public?

Mr. Young: The compound its self will be fenced for security purposes. Around it we will plant some foliage but when you look from below up towards the crater, the top of the hill, you will still see the monopine tree and you will still see the top of the equipment shelter. It will not be totally blocked from residents and visitors looking from the bottom of the road up the hill.

Mr. Hull: I can also state, Commissioner Ho, that when this site was originally approved was kind of around that time when the monopine technology or strategy was being adopted using various masking as in this particular case being proposed, masking a structure to look like a tree. Around this time we were just beginning to adopt those strategies, prior to it was just an industrial monopole in various areas for the facility. So seeing the new proposal to replace the existing somewhat industrial monopole in the Japanese Cemetery, the department sees it as a visual upgrade. They also spent some significant time with the Kauai Historic Preservation Review Commission in which the tree proposal essentially in order to mitigate the impacts on the historical integrity of the area and at least 2 meetings working with the commission to a design that the Kauai Historic Preservation Commission felt was most suitable for that area.

Chair Keawe: Any other questions for the applicant? Mr. Katayama.

Mr. Katayama: Mr. Young, one of the conundrums that we have as a Commission in collocating different providers is that generally when you engineer the pole it is really configured for the current demands. And whenever there is an opportunity or the issue of we need another site or another pole, can you collocate, and the response is the structure will not lend its self to that. It is undersized. How do you plan to move forward? As being the first person on the pole to build capacity in that pole to take additional providers costs you money and that holding cost may or may not ever be returned. So we always come up with the issue that we would love to collocate except the pole that exists is not structurally sound for additional people.

Mr. Young: When we designed the tower we always over design to anticipate for the possibility of additional carriers coming on board. When you look at the 60 foot tower with 2 carriers on it with Verizon on the very top and AT&T's antennas on the second position there is very little likelihood that a third major carrier like Sprint or Team Mobile or any other new carrier that may come about...

Mr. Katayama: How about KIUC or police or public service carriers?

Mr. Young: There is very little likelihood that another one of those larger carriers will take a third position. That may simple be just too low. Now when it comes to police, KIUC, or other types of potential users, their type of equipment differs greatly from that which the telecom companies use. That being the case, because we over design our towers the possibility or

potential for these other county facilities to utilize the antenna pole although I can't say is a slam dunk can do, their type of facilities are simply smaller, lighter, don't take up as much room so the likelihood of them being able to use the tower is much greater than if Team Mobile came on board with another 12 antennas to be placed someplace on the tower.

Mr. Katayama: So in the need for increasing capacity because that is the issue currently right, because the usage is going up.

Mr. Young: Correct.

Mr. Katayama: Is the new equipment getting more compact?

Mr. Young: Not necessarily.

Mr. Katayama: Not necessarily. So that is an issue as well then moving forward.

Mr. Ho: The tower capacity, is there a ground capacity for another vendor to come in and put his things on the ground?

Mr. Young: If a third carrier would want to come onto the property they would have to negotiate directly for additional ground space over and above the 1,300 square feet that has already been set aside for Verizon and AT&T's use. So they would go back to the keepers of the Kilauea Japanese Cemetery to negotiate whatever additional ground space they would need and abut that up against the existing 1,300 square feet that we plan to utilize.

Chair Keawe: So if I understand Mr. Young, the commercial carriers, it's all about height and location on the pole. As you said the pole is not high enough to have a third operator on that particular pole.

Mr. Young: What I mentioned was it is highly unlikely that a third carrier would find the third position on the pole desirable because it is fairly low. That doesn't mean they won't accept it but from my experience it is probably not going to be a position that they would find desirable.

Chair Keawe: Given the nature of the business you are all competing with each other right? So if I am putting up the pole I want to be on the top.

Mr. Young: Sure.

Chair Keawe: I just wanted to make sure it's clear. Marissa can you read the preliminary recommendations please.

Staff Planner Marissa Valenciano read department's recommendation into the record.
(On file)

Chair Keawe: Any other questions on the conditions? Does the applicant understand the conditions and agree to all the conditions?

Mr. Young: We have read them and we agree.

Chair Keawe: Any other questions? I will entertain a motion at this point.

Mr. Mahoney: Chair, move to approve Class IV Zoning Permit Z-2017-3, Use Permit U-2017-3, and Special Permit SP-2017-1.

Mr. Ho: Second.

Chair Keawe: It's been moved and seconded all those in favor. (Unanimous voice vote)
Opposed? Motion carried 6:0.

Mr. Hull: Before we move on to the next agenda item if I could have a moment of departmental privilege. While Marissa is here I would like to recognize Marissa right now, she has been recently named our employee of the year. Over the past few years Marissa has become a fixture at the Planning Commission from TVR enforcements to Use Permits and those are all projects essentially under either the Enforcement Division or the Regulatory Division. But the fact of the matter is Marissa is actually not a part of those divisions, she is part of the Long Range Division which is tasked with the General Plan Update and other community plan updates. With some of the lack in resources Marissa, as young as she is, has essentially become the single strongest working workhorse for the department in filing the various holes that we needed filled and she has done it with the utmost commitment and professionalism one could every expect or want out of an employee. Her work ethic is unparalleled and her commitment to this island and to the county is truly an inspiration for all of us. So I just wanted to take this moment to recognize her so thank you Marissa.

Mr. Young: May I add one note onto what Kaaina just mentioned. I can't agree with him more. She gives me calls on weekends, on holidays. I am scratching my head, it's Sunday at 3:00 in the afternoon, and what are you doing in the office on a holiday? She is a very dedicated worker, the county is very fortunate to have her.

Mr. Dahilig: Mr. Chair I believe we are on the last item for action today, Continued Public Hearing.

Zoning Amendment ZA-2017-2: Petition to amend Ordinance No. 436, relating to Section 8-17.2 of the Kauai County Code (1987), as amended, requesting a revision to the Visitor Destination Area boundary in Poipu; involving a project located along the makai side of Pe'e Road in Poipu and immediately adjacent to The Point at Poipu resort facility, further identified as Tax Map Keys (4) 2-8-021:041, 044 through 068, and containing a total area of 13.078 acres = **CIRI Land Development Company**. [Director's Report received and hearing deferred 1/24/17.]

Mr. Dahilig: Mr. Chair, we, at the last meeting, did request a deferral on the item pending a review of the Affordable Housing applicability item as presented by the Housing Agency and as recently reviewed by the County Attorney's Office. Premised on that opinion by the County Attorney's Office that the Housing Agency received, we received this communication this

morning from the Housing Agency circulated the Commission's review and part of our presentation from the last meeting, we would like to incorporate the Housing Agency's 5 recommended conditions of approval along with the other items that were presented before the Planning Commission the other day. I would ask that the applicant be given an opportunity to again maybe confirm whether they are amenable to these conditions as well as amendable to those that were presented at the last meeting in January. At this time I believe the department still stands on its recommendation from the last meeting for approval with these additional conditions as presented.

Chair Keawe: Mr. Belles:

Mr. Michael Belles: Good morning Mr. Chair and members of the Planning Commission, for the record my name is Michael Belles representing the applicant CIRI Land Development Company. I want to thank you very much for giving us this opportunity to comment on the proposal by the Housing Agency. As you know at the last meeting before the deferral was granted we had circulated a proposal to the County Attorney's Office to the Planning Director and to the County Housing Agency which is basically the essence of what you have now reflected in the communication from the County Housing Agency. Simply what it requests is, we had the opportunity to sit down with the County Housing Agency and negotiate a Housing Agreement and record the appropriate documents that reflect items that have been discussed previously and which we had agreed to previously based on our commitment to the county. The only issue remaining was for the County Attorney's Office to opine if what we were doing and what we were proposing was appropriate under the circumstances and we understand that this proposal by the County Housing Agency reflects that. And since it is simply memorializing what we had proposed in the first place with a few minor additions we have no objections to what is being recommended by the County Housing Agency and that it be added to a condition to the visitor destination area.

Chair Keawe: Mr. Dahilig since we just got this this morning can you go through it?

Mr. Dahilig: What the Housing Agency is requesting is that before there is an approval of this that there are conditions to be included to require that final approval for S-2015-14 be given for a 10-lot subdivision, that there is an exclusion for, again just noting again that there is that exclusion of that 1 lot on map C.2 that amends the zoning district boundary for the subject property, that for all 10 lots within the subdivision that its restricted to 1 dwelling per lot. So this is just to ensure that in the event anybody tries to claim an ADU even though right now under law that is not possible, that there is none that would be added to each of the parcels and that there is a recordation of a Housing Agreement with the Housing Agency within 60 days of adoption under conditions 4 and 5. As the Housing Agency raised at the last meeting their concern was that the subdivision had not been finally approved and recorded because of ongoing infrastructure items that are going on right now and that they are, in the event that the subdivision is not followed through with, that they would like to ensure that the entitlement that is being imposed by this particular zoning amendment would not confer an additional benefit to a landowner without applicability of the housing ordinance. The bright line at least as we understand from the County Attorney's Office is applicable in this situation however the facts of the matter are that the 10 lots as represented in the application have not been fully created yet

because they have not been recorded with the Bureau of Conveyances. So that is why you are seeing in the tax map key above that the tax map keys have not been adjusted to reflect the new subdivision that is was approved by the Planning Commission on tentative. I will also let the County Attorney weigh in if she would like to jump in and articulate anything further.

Ms. Higuchi-Sayegusa: The request for the opinion was from the Housing Department so the opinion advice was given to the Housing Department. I'm not really going to disclose the context of the Housing opinion, that is really their privilege to waive or not but the conditions kind of represent what their end game was or a way to navigate through whether or not the county code 7A 1.4 applies or not. So I think this is a means to help to move this forward and it came from the Housing Agency. I am not sure if I am helping anything. I'm not really going to get into the details without her waiver of the privilege.

Mr. Dahilig: Ultimately this steams from the housing ordinance having a bright light trigger. As we discussed at the last meeting if it is for permits it is 10 or more, if it is for zoning amendments it is no more than 10. It essentially defaults to 9 being applicable. I'm sorry, no more than 10, 10 or more for zoning amendments and it is more than 10 for permits and other actions. That is where the language of the housing ordinance was a bit screwy in that you have to have this bright line that creates applicability. I understand that there is some question whether this could be perceived as trying to move around the housing law and whether we wish to judge it for being or no being the case I think what is very clear given the laws we are required to uphold is that you either are in the box or you are not in the box. And how you decide to present an application before the Commission is whether you are in or outside of that box. The applicant is choosing to stay outside the box.

So in as much as we may have certain feelings about whether they should or should not be in the box or outside the box the bright line is the law and I think that is where we see the Housing Agency trying to impose safeguards because whether they are in or outside the box at this point is incumbent on them finalizing their subdivision. That is what they are saying. You are okay to step outside the box if you finalize your subdivision. If you do not finalize your subdivision we want you to stay in the box. I don't particularly have a box because today is single awareness day for myself but when you think about Valentine's Day this could be perceived as something that either give somebody a box of candy or you don't have the box of candy at all. Sorry for using the box analogy. In any event I understand the perception issue of whether or not the applicant is trying again to not be applicable to the law but that is a choice that is presented based on the way that Chapter 7A is written. Either you come in for 9 or you come in for 10. Now the County Attorney's Office has weighed the opinion received from the Housing Agency that indicates to them that the applicability portion of the ordinance is in fact a bright line and these conditions we agree with them, make them comfortable for ensuring whether or not they are applicable or not applicable. If a condition persists that they do not move forward with the subdivision 2015-14 but yet the VDA designation does go around the area that they would in fact still be required to meet the housing obligation. That is their safeguard and I think we are okay from a departmental standpoint honoring that request on their behalf to have that included. So what we would propose Mr. Chair is that instead of condition...

Mr. Katayama: Before we get into that can you add a little more background for me please and in this case these conditions are tailored to that 10-lot subdivision. But physically there is a lot more TMKs that this parcel could be subdivided into or carved up into. Now if the applicant decides not to move forward and sells it to somebody else would they be...how do these restrictions continue on if they choose to complete the density that is allowable? Can you literally take away privilege from any further action by new owners?

Mr. Dahilig: Just like conditions of approval with a permit these are legal conditions that are attached as part of the zoning change for the VDA. Let's take your example that they do not follow through with the subdivision action and they leave everything as is. In that case they still are entitled to build on the property but what they would not have the benefit of having those structures be able to have the ability to be used consistent with visitor destination area entitlements. If this stuff is put in to the organic zoning amendment that is being proposed the VDA would not be applicable if they do not seek issuance of final approval of S-2015-14. That is condition No. 1 that they are proposing here in there transmittal to the Commission. Structures still could be built but they could not be used as vacation rentals. That is essentially the net effect of having these encumbrances on the zoning amendment that they could still default back to lots 41 and 44 through 68 and build as the current zoning map does allow them to build.

Ms. Apisa: What is that number?

Mr. Dahilig: If I could refer the Commission over to pdf. page 721 of 818 just so we can illustrate the history of the lot. The parcel interestingly, again as you heard from the CEO of the Alaska Native Corporation, was a piece that was picked up as surplus federal property as part of the settlement with the native peoples of Alaska in the mid 90's. Previous to them even picking up the lot you will notice that there are a bunch of squares that line the parcel, they are about 10,000 square feet apiece I believe. These are pre-CZO and these were recorded with the state and they were and still area as of this moment still legal lots of record. And because they are legal lots of record they are entitled to at least be able to build 1 dwelling unit. That in and of its self already entitles them to more than 20 units because I believe if my recollection serves me right there are over 26 lots of record. So the potential density build out for this parcel is actually 26 as of this moment given these grandfathered lines and the grandfather development standards because of these pre-1972 lots that were created. Through this Commission's action via an SMA amendment to consolidate and re-subdivide the parcel we dropped the density back down to 10 and applicability standards of the current CZO which is the open development standards would now apply. Previously those were not applicable, now they are. So it actually drops the density down.

One other thing to keep in mind is if they were to build as is given the lots they would not be subject to the housing ordinance because the lots already exist and there are no additional permits that are necessary. So that is why the discussion before the Commission a few years ago was looking at what best suited the community as a product versus what could be build out there in net effect. So they are reducing the density, they are providing public access, formalizing the public access, they are formalizing public parking, these are all things that from a net effect standpoint would not have happened if the Alaska Native Corporation had chosen to build given their current entitlements. But because there is a pending housing item as well as new

entitlements that are being sought by the applicant to allow for visitor destination area type usage, that is where the Housing Agency is coming and saying now that you are falling under the new code, pass 72, we want to make sure that whatever you are doing we get our fair share. And I think that is a basic fair basic premise here and so what they are wanting is to ensure then that if these additional VDA entitlements are imposed by law if the County Council were to approve these things that if the VDA boundary was drawn around as proposed, given the proposed subdivision that still needs to go through final, that they in fact would not be running afoul of Chapter 7A which was the housing ordinance. I know it is a little complicated but that is why you see the tag line as the tax map key as 41 and 44 through 68 because currently as of this moment they still hold the higher density entitlements versus what they are trying to do as a drop down.

Mr. Katayama: Getting back to simplifying all of that if someone chose to go to the higher density the only thing...what they would sacrifice is a VDA designation.

Mr. Dahilig: Yes. If they do not record the final subdivision that shows 10 lots and they decide to construct 26 the VDA would not be applicable and that is what the Housing Agency is asking for.

Ms. Ahuna: But if they construct the 26 units they would be subject to affordable housing.

Mr. Dahilig: No.

Mr. Katayama: It's already there.

Ms. Ahuna: It is considered resort or residential in that area?

Mr. Dahilig: It is state land use urban and county open. It's wild, when I first saw this and the other attorneys that are helping CIRI out on this and they put this in front, I thought they were proposing those lots and I said no way and they said no, those exist. In the case the philosophy of how construction was envisioned previously and how context sensitive development has evolved over time, because those lots do exist under state law we have to at least allow 1 unit per parcel.

Ms. Ahuna: So as it stands we are moving forward with, from my understanding it sounds like they are open to the conditions that the Housing Agency is putting forth.

Mr. Dahilig: Yes.

Mr. Ho: What would be required of Mr. Belles? He would have to come with a new subdivision map and then sign the agreement with Kanani?

Mr. Dahilig: Yes. In terms of sequencing there are a lot of moving parts with this at this point. They still need to close out their final subdivision. The final subdivision because it falls under that phrase more than 10 does not trigger the housing ordinance so therefore the writer that Kanani is asking for would not be applicable if they plat, if they finalize the plotting. But if this

goes through the Council, because it's 10 or more then it depends on as Kanani is mentioning in the first bullet point, it depends on whether or not they have actually got through with that approval. If they haven't then at that point they would forego any additional entitlements that the law would provide if it was passed.

Ms. Ahuna: Wouldn't we put these conditions in moving forward for the final approval?

Mr. Dahilig: We cannot by law in subdivision because applicability in subdivision is more than 10. Again it is this weird...when we look at plain language of the law it is what it is and this little fine line distinction between 10 or more or more than 10 has, I think, created this unique situation that we are struggling with. So just to answer that we could not put these conditions in the subdivision approval because that is not applicable.

Chair Keawe: Mr. Belles any further comments about this?

Mr. Belles: I don't want to trivialize this, it is serious and it is also very complicated because using a biblical reference, in the beginning there were 26 lots. And as the Planning Director has accurately and succinctly stated they could abandon the subdivision right now which is only 10 lots with 1 single family residence per lot and go back to the original 26 lots. That is not the intention of the client. When they acquired the property back on 1996 and for the last 8 years have looked at this property and planned it and talked to its neighbors and looked at the community they felt that the original 26 parcels was far too densely populated, too much density for this region and consistent with the neighborhood. So they came up with the proposal that was approved first by the Planning Commission back in 2014 which was an SMA Class II permit which represented it is going to be 10 lots, 1 single family residence per lot. The year after that in 2015 they got tentative subdivision approval which allowed for the 10 lots. That got an extension in 2016 and it is the expectation that at the end of this year the subdivision will be complete and we will get final approval from the Planning Commission. At that point there will be 10 legal lots or record. Overlaying that now is the VDA which will only allow 9 of those 10 lots to have the benefits of the VDA. I don't know that an attorney can simplify things but that is my best shot at trying to summarize a little history coupled together with what the intent of the client is.

Chair Keawe: And as item 3 says there will be a Workforce Housing Agreement as part of it.

Mr. Belles: Correct, which will memorialize the things that we have discussed today because as you recall the Housing Administrator, I am paraphrasing because I don't want to put words in her mouth, but what I understood her saying is that they are worried about the worst case scenario, what happens if this subdivision does not go through and they revert back to the original 26 lots and you get a VDA and then they get the benefit of all that. It looks like a bait and switch. Again, not her words, my words but in its worst way that would be the way it would be interpreted. So to avoid the appearance of that we have agreed that we will work together with the county Housing Agency to come up with a housing agreement that reflects the parties' intentions both in terms of the applicant and the county.

Chair Keawe: Any other questions, Mr. Katayama.

Mr. Katayama: This is more for either of the Mikes, condition 4, is that relating the subdivision? What does 10 dwellings on the subject property mean?

Ms. Ahuna: Ten total and 9 VDA.

Mr. Katayama: It seems to be in conflict with 3 or it is not clear in my mind in that it is limited to the lots of record for the whole subdivision.

Ms. Higuchi-Sayegusa: I think 4 is the deed restrictions so it also works to put other owners on notice or perspective buyers on notice so 4 is the deed restriction and 3 is the restriction of the 10 for the whole subdivision for the consolidation action.

Mr. Katayama: But if you put this restriction on each lot because a subdivision goes away after a while, right? You should have 10 owners at some point.

Mr. Dahilig: Would it make sense to say more than 10 dwelling units on the resulting lots in total? Is that what you are looking for?

Mr. Katayama: I am looking for more clarity to be consistent with 3.

Mr. Dahilig: Your concern is that phrase "subject property."

Mr. Katayama: Yes.

Mr. Belles: May I add something? There may be some misunderstanding. When you get the final subdivision approval you are going to have 10 legal lots of record. The original 26 lots that were provided for is going to be superseded entirely so that when anyone does due diligence that they want to buy any one of these 10 lots assuming they get the final subdivision approval they will go to the Bureau of Conveyances and they will see the housing agreement and they will see the deed restriction that limits 9 of those 10 lots to having the benefits of VDA and the 10th lot does not. That is the sole intent of the conditions as is worded right now.

Mr. Dahilig: Just to develop what Mike is saying further, if you look at condition 4, condition 4 is meant to take care of that more than 10 problem and condition 5 is meant to take care of that 10 or more so again that weird divergence in the applicability.

Mr. Katayama: What would be the language that is recorded?

Mr. Dahilig: That is something I think the County Attorney's Office would do. We have a standard deed restriction form that we would use. If the concern is that you are looking at trying to just clarify 10 dwelling units in total then we can say causing the development of more than 10 dwelling units total throughout the subdivision. Is that better language?

Mr. Belles: I don't know that it is possible to craft better language because this all assumes good faith and that my client is going to do what it has represented it is going to do which is create a 10 lot subdivision. If for whatever reason an act of God or whatever reason 10 lots are not

created we revert back to the original 26 and that is the contingency that the County Housing Agency was most concerned about, that they got the benefit of a VDA over 26 lots instead of 10. And we are saying no it's not even 10 it is 9 lots.

Mr. Dahilig: I understand. I think there is, given the verbiage given by the Housing Agency, there could be some ambiguity on that phrase "subject property" because what ends up happening is if we are subdividing into 10 lots the phrase "subject property" could be viewed as an individualized deed restriction on each of lot. Because that is what is going to end up happening at this point is that this is going to be recorded as a deed restriction on each of these separate lots or record and they may not look at the history of the subdivision total. And so whether subject property could be clarified I think is what I am proposing. It is what I am hearing as the concern.

Mr. Katayama: For me.

Mr. Belles: What you may want to do then is just incorporate the language in the reference that you have in the preceding condition No. 3 "per subdivision S-2015-14" because the subject property, again, becomes consistent with the subdivided property.

Ms. Higuchi-Sayegusa: That is something we can tweak the exact language of the deed restriction.

Mr. Katayama: Generally the second or third buyer of this is going to read it and they are going to interpret it in their favor if you are not clear.

Mr. Belles: But the third or fourth purchaser or however many successors there are down the line, they are going to have to have a title report. The title report is going to show all recorded documents and they are going to be acting at their own risk if they think they are entitled to more than what the law actually provides and there will be both in addition to what is currently on the books which is 26 lots you will have a subdivision of 10 lots, you will have a VDA which shows only 9 lots are included with that, and then you will have an affordable housing agreement and a deed restriction. All of which will show up on your title report should anyone want to buy any one of these 10 parcels.

Mr. Mahoney: That sounds clear to me.

Ms. Apisa: Just to recap, basically it reduces it to 10 lots, gives public access to the beach, public parking, and it reduces density.

Mr. Belles: Yes. And again this is something this Commission albeit different membership in 2014 thought was a good idea by granting the SMA and in 2015 when they granted the subdivision approval and then in 2016 when they granted the extension. So we are just trying to continue that and see that to its final conclusion which is consummating that 10 lot subdivision, now with the VDA overlay over 9 of the 10 lots. And any documentation we do the County Attorney's Office will be involved to ensure that the interests of the county are protected and that we don't run amuck.

Chair Keawe: I guess given the history of where we started and like Mr. Belles says, in the beginning there were 26 lots which theoretically are still there and that could be a very different outcome if we don't follow through with what is being proposed.

Mr. Dahilig: The language I would suggest to the Commission if this is a concern would be to strike the phrase "on the subject property" in paragraph 4 and use the phrase "throughout S-2015-14".

Mr. Belles: We have no objections to that.

Mr. Dahilig: Mr. Chair do you want me to just go to my recommendation then? We would stand on the bill as presented for the condition with the exception of renumbering section 3, this is on page 720 or 818 in the pdf. It would be to renumber section 3, the Severability section to section 4 and renumber section 4 to section 5, add a section 3 incorporating the 5 items. It would read as "from the Housing Agency, the amendment of the portion into the VDA shall be subject to the following", and then I would list items 1 through 5 as actually items (a) through (e) with the changed language to state "throughout S-2015-14" instead of "on the subject property". I will state it one more time, we would renumber section 3 to section 4, section 4 to section 5, insert a new section 3 that takes the Housing Agency's requirements verbatim except for the changes to renumber it instead of 1 through 4 to (a) through (e) because we are dealing with section 3. And then we would change the language instead of 10 dwelling units "on the subject property" it would say "throughout S-2015-14".

Chair Keawe: That is basically the zoning amendment ZA-2017-2.

Mr. Dahilig: Yes that would be our proposal given the discourse on the Commission.

Chair Keawe: Any more discussion on this issue? Any more questions, if not we will entertain a motion.

Mr. Mahoney: Once again to make the motion with all the amendments that have been introduced are we going off of ZA-2017-2?

Chair Keawe: Right.

Mr. Mahoney: I will make a motion to approve with the added amendments by the Director and if you need any more clarification I am going to need a little sheet here to go over.

Chair Keawe: We have a motion on the floor do we have a second.

Mr. Katayama: Second.

Chair Keawe: Any more discussion?

Ms. Apisa: Just as a realtor am I okay to vote or do I need to abstain?

Chair Keawe: As long as there is not conflict.

Ms. Apisa: I don't have any conflict at this point.

Chair Keawe: Sir are you wanting to testify on something? You kept raising your hand.

Unidentified Speaker: I have a question.

Chair Keawe: You either have 3 minutes to testify and I don't think it's more of a question. We had a portion in our meeting where you sign up to testify so that is the portion where you come up and testify. We are right in the middle of making the motion, go ahead.

Mr. Arnold Albreck: My name is Arnold Albreck, I am a fulltime resident of an adjoining property immediately adjoining it. I just wanted to be sure that we end up with the proposal and that is carried forward for the 10 lots as provided and not that somebody can come back and break the 14 acres into 20 or more parcels that are not single family residents. Because the 26 lots are on the other side of the old Coast Guard Lighthouse preserve and so the first question would be if they did that are they the original lots are plotted or do they affect the area that is immediately adjacent to the Makawena Condominiums where many of us are residents. For clarification of what I am asking is that when you talk about the parcels that it state that they are single family residents, not dwelling units. A dwelling unit could be...

Chair Keawe: I think we have addressed that issue. We have gone over it several times, thank you for your testimony. We have a motion on the floor all those in favor. (Unanimous voice vote) Opposed?

Ms. Apisa: I will choose to abstain.

Chair Keawe: Alright, 1 abstention. Motion carried 5:0.

ANNOUNCEMENTS

Topics for Future Meetings

The following scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, Hawaii 96766 on Tuesday, February 28, 2017.

Mr. Dahilig: Mr. Chair that is all the action items for the Commission on its agenda, we have circulated the batting order for the upcoming meeting on the 28th. We do have one permit application for the Commission but I do want to because I know this will be broadcast, the intention is to bring back further amendments to the departmental draft of the General Plan so just to anticipate that the meeting on the 28th will include more discussion on the General Plan. We would expect our public notice that comes our next week Wednesday to include an item that talks about the discussion on this item.

ADJOURNMENT

Chair Keawe: I will entertain a motion to adjourn.

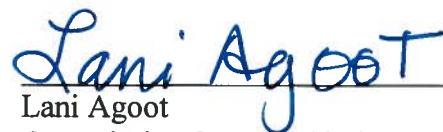
Mr. Mahoney: Move to adjourn.

Ms. Ahuna: Second.

Chair Keawe: Thank you, meeting adjourned.

Chair Keawe adjourned the meeting at 11:28 a.m.

Respectfully Submitted by:



Lani Agoot
Commission Support Clerk

() Approved as circulated (add date of meeting approval)

() Approved as amended. See minutes of _____ meeting.